

AN ORDINANCE

AMENDING CHAPTER 5 OF THE CITY CODE ENTITLED "ANIMALS," RELATING TO DANGEROUS DOGS AND TRAPPED ANIMALS; PROVIDING FOR CRIMINAL PENALTIES AND PUBLICATION.

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WHEREAS, state law allows for the creation of an administrative hearing process for determining dangerous dog designations and the City of San Antonio Animal Care Services (ACS) has conducted these in-house hearings monthly for many years; and

WHEREAS, the proposed code changes will simplify the process and allow the ACS Director to deem a dog dangerous with the formal appeal hearing at Municipal Court; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Chapter 5 of the City Code of San Antonio, Texas entitled "Animals", is hereby amended by adding language that is underlined (added) and deleting the language that is stricken (~~deleted~~) to the existing text as set forth in this Ordinance.

SECTION 2. Chapter 5 of the City Code of San Antonio, Texas is hereby amended as follows:

The following definition in Chapter 5, Article I, Section 5.1, Definitions, is deleted:

~~*Dangerous animal* shall mean any animal who meets any or all of the criteria in Article IV.~~

Chapter 5, Article I, Section 5-14, Animal traps without holding mechanism, is amended as follows:

Sec. 5-14. - Animal traps without holding mechanism.

- (a) A person may set up on his own property humane traps used to capture dogs, cats, and other small animals alive which must be sheltered and shall be checked at least once every two (2) hours or every eight (8) hours if left overnight by the individual setting the trap. Humane care shall be provided for any trapped animals including the provision of food, water, and protection from extremes of the environment including heat, cold, and precipitation. Trapped dogs or cats ~~bearing identification and/or city registration~~ shall be turned over to the department or the animal's owner.
- (b) It shall be unlawful for a person to trap a dog or cat and fail to turn the dog or cat over to the department or the animal's owner.

Chapter 5, Article IV, titled Dangerous Animals and Aggressive Dogs, shall be amended to be titled as follows:

ARTICLE IV. - DANGEROUS ANIMALS AND AGGRESSIVE DOGS

Chapter 5, Article IV, Section 5-75, Keeping of dangerous animals, is amended as follows:

Sec. 5-75. – Dangerous dogs ~~Keeping of dangerous animals.~~

Dangerous dogs shall be defined in accordance with Texas Health and Safety Code Chapter 822, Subchapter D as referenced below and shall be determined and regulated in accordance with said Subchapter.

Dangerous dog means a dog that: ~~Any animal owned or kept shall be determined to be dangerous if:~~

- (1) ~~It~~ makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the animal was being kept and that was reasonably certain to prevent the animal from leaving the enclosure on its own;
- (2) ~~It~~ commits unprovoked acts in a place other than an enclosure in which the animal was being kept and that was reasonably certain to prevent the animal from leaving the enclosure on its own and those acts cause a person to reasonably believe that the animal will attack and cause bodily injury to that person.

Chapter 5, Article IV, Section 5-76, Investigation, seizure and confinement of alleged dangerous animal, is amended as follows:

Sec. 5-76. - Investigation, seizure and confinement of alleged dangerous dog ~~animal.~~

- (a) Upon receipt of a sworn affidavit of complaint, signed by one (1) or more individuals before an individual authorized by law to make sworn statements, the department shall investigate the complaint. The complaint shall contain a description of the incident involving an alleged dangerous dog ~~animal~~, as defined above, the date and location of the incident, the name of the owner of the dog ~~animal~~, the address of the owner, and a description of the dog(s) ~~animal(s)~~ involved in the incident. Said investigation may include discussing the incident with the owner/keeper of the dog ~~animal~~. The owner/keeper of the dog ~~animal~~ shall have the right to provide an affidavit or statement concerning his own dog ~~animal~~.
- (b) After receiving a sworn affidavit of complaint and upon making a decision that seizure is a reasonable precaution to insure the health and safety of people and/or animals nearby, the director or his designee may order the immediate

seizure and impound of the dog animal. An administrative search warrant shall be obtained from any municipal court magistrate to enter onto private property to search for an dog animal which is allegedly dangerous or has been previously determined to be dangerous, if permission to enter the subject premises is denied by a person in lawful possession. If the dog animal cannot be safely approached, a tranquilizer projector may be used by department personnel. The cost of securing said dog(s), animal(s), ~~pending the determination hearing,~~ shall be borne by the owner. ~~The animal(s) involved may be confined at the animal care services facility or other location designated by the director until the dangerous animal determination hearing has been conducted, any appeal, and a final determination has been made.~~ If an dog animal is determined to be dangerous, it will remain in confinement as directed by the director. An dog animal that has been determined to be dangerous cannot be released back to the owner until the owner is able to demonstrate his ability to comply with all the requirements for dangerous dogs animals as outlined in sections 5-80.

- (c) An animal care officer may impound an alleged dangerous dog animal if the officer has cause to believe that an dog animal is dangerous as defined above.
- (d) Within five (5) working days after the director deems a dog dangerous impounding an alleged dangerous animal, the director will notify the owner of the dog, animal, of the dangerous dog determination, by certified mail, return receipt requested.; The notice shall include the reason for the allegation, and all requirements for owners of an dog animal determined to be dangerous as set out in section 5-80.

Chapter 5, Article IV, Section 5-77, Payment for cost of confinement, is amended as follows:

Sec. 5-77. - Payment for cost of confinement.

- (a) The owner of an dog animal impounded by the department must pay the costs of care of the dog animal while it is in the custody of the department prior to the release of the dog animal to the owner. Reasonable expenses for this care include, but are not limited to the cost of housing, feeding, emergency veterinary medical care, immunizations and routine veterinary medical care for the dog animal.
- (b) If an dog animal is held in impoundment by the department for more than thirty (30) days, the owner of the dog animal must pay the actual costs accrued for the first thirty (30) days of impoundment, and every thirty (30) days thereafter until the matter for holding the dog animal has been finalized. The department will mail a notice and statement of costs to the owner of the dog animal at the address on file with the department. All costs must be paid within a maximum of three (3) business days following the receipt of the

notice and statement. If the costs have not been paid within the allotted three (3) business days, this will be considered a voluntary relinquishment of the dog animal by the owner and the dog animal shall immediately become the property of the city.

- (c) Costs must be paid to ~~at~~ the department in cash or certified funds only. The costs shall be deposited into the city's general trust fund, in a subaccount specific for each case.

Chapter 5, Article IV, Section 5-78, Determination hearing; notice of hearings, is amended as follows:

Sec. 5-78. – Appeal of dangerous dog determination to municipal court ~~Determination hearing; notice of hearings.~~

- (a) Texas Health and Safety Code § 822.0421(b) provides for the appeal of a dangerous dog determination to municipal court. ~~If an animal is alleged to be dangerous, the director or his designee shall schedule a dangerous animal determination hearing. The determination hearing shall be conducted within fifteen (15) working days of the date the animal is impounded for allegedly being dangerous. The owner shall be notified of said hearing by certified mail, return receipt requested. If the hearing is not conducted within fifteen (15) working days of date the animal is impounded, the animal shall be deemed to be not dangerous and shall be returned immediately to the owner at no cost. Failure of the owner of the animal to appear at the determination hearing shall result in a final determination with no further appeal. The owner may be represented by counsel.~~
- (b) An owner may appeal a dangerous dog determination by filing a written notice of appeal to municipal court within fifteen (15) days after receiving notice of the determination. ~~The animal determination hearing officer shall determine whether, by a preponderance of the evidence, the animal is a dangerous animal as defined in this chapter based upon evidence, affidavits, and testimony presented at the time of the hearing by the owner, witnesses to any incident which may be germane to such a determination, department personnel, police or any other person possessing information pertinent to such determination. The owner may cross-examine witnesses. A record of the hearing shall be kept. The animal determination hearing officer shall issue written factual findings and a determination as to whether the animal is dangerous within five (5) working days after the determination hearing. The owner shall be notified of the animal determination hearing officer's findings and determination by certified mail, return receipt requested.~~
- (c) A municipal court judge shall conduct a hearing to determine whether the preponderance of the evidence supports the dangerous dog determination. ~~The owner of the animal determined to be dangerous has the right to appeal the~~

determination to municipal court within five (5) working days of receiving the animal determination hearing officer's determination. Failure to appeal within the time allotted shall result in the animal determination hearing officer's decision as final.

- (d) The municipal court judge shall be the finder of fact. A municipal court judge shall sit as the administrative appeal hearing officer, and shall conduct the appeal as a civil administrative proceeding for the purpose of reviewing the written or audio record and/or viewing a video tape of the hearing conducted by the animal determination hearing officer, and hearing any additional offered relevant sworn testimony and other evidence that such administrative appeal hearing officer deems useful. The administrative appeal hearing officer shall decide if the determination of the animal determination hearing officer is supported by a preponderance of the evidence. In addition, the administrative appeal hearing officer is permitted to consider whether the animal determination hearing satisfied the requirements of due process. The administrative appeal hearing officer shall prepare a written memorandum of findings and declare the animal determination hearing officer's ruling either affirmed or reversed.
- (e) At the conclusion of the hearing, the municipal court judge may affirm or reverse the dangerous dog determination. The ruling of the municipal court may be appealed in the manner provided for the appeal of cases from municipal court.
- (f) The department shall retain custody and care of the dog until all appeals are exhausted, unless the owner complies with section 5-80(a).
- (g) An owner may appeal the decision of the municipal court in the manner provided for the appeal of cases from municipal court.
- (h) The municipal court judge may compel the attendance of the complainant, any known witnesses, the dog owner against whom the complaint was filed, and the director or his representative who investigated. The City shall be represented by the City Attorney or an Assistant City Attorney in all appeals of a dangerous dog determination.

Chapter 5, Article IV, Section 5-79, Defense to determination of dangerous animal, is amended as follows:

Sec. 5-79. – Hearing to determine compliance with dangerous dog requirements **Defense to determination of dangerous animal.**

- (a) Texas Health and Safety Code § 822.0423 provides that a municipal court may conduct a hearing to determine whether the owner of a dangerous dog has complied with the requirements for the owner of a dangerous dog.

- (b) Upon an application from any person, the municipal court shall conduct a hearing to determine compliance with dangerous dog requirements.
- (c) A municipal court judge shall conduct a hearing to determine whether the preponderance of the evidence supports the allegation that the owner has failed to comply with dangerous dog requirements.
- (d) The municipal court judge shall be the finder of fact.
- (e) At the conclusion of the hearing, if the municipal court judge finds that the owner has failed to comply with the dangerous dog requirements, the judge shall order the seizure of the dog in accordance with Texas Health and Safety Code § 822.042.
- (f) An owner or the person who filed the application for the hearing may appeal the decision to municipal court in the manner provided for the appeal of cases from municipal court.
- (g) The municipal court judge may compel the attendance of the applicant, any known witnesses, the dog owner against whom the application was filed, and the director or his representative who investigated. Any interested party, including the City Attorney or an Assistant City Attorney, may present evidence at the hearing.

~~It is a defense to the determination of an animal as dangerous and to the prosecution of the owner of an animal:~~

- ~~(1) If the threat, injury, or damage was sustained by a person who at the time was committing a willful trespass or other tort upon the premises occupied by the owner of the animal;~~
- ~~(2) If the person was teasing, tormenting, abusing or assaulting the animal or has, in the past, been observed or reported to have teased, tormented, abused or assaulted the animal;~~
- ~~(3) If the person was committing or attempting to commit a crime;~~
- ~~(4) If the domestic animal killed was at the time teasing, tormenting, abusing or assaulting the animal;~~
- ~~(5) If the animal was protecting or defending a person within the immediate vicinity of the animal from an attack or assault;~~
- ~~(6) If the animal was injured and responding to pain; or~~

(7) ~~If the animal was protecting its offspring, itself or its kennelmates.~~

Chapter 5, Article IV, Section 5-80, Requirements of dangerous animal owners, is amended as follows:

Sec. 5-80. - Requirements of dangerous dog animal owners.

- (a) An owner of an dog animal determined to be dangerous by the director animal determination hearing officer or the administrative appeal hearing officer, must comply with all of the following ten (10) requirements before the subject dog animal can be released to the owner by the director. The director must, however, release the dog animal to the owner if a state licensed veterinarian with a facility located within the city verifies, upon being contacted by a city veterinarian or director, that the owner has arranged for the required surgery of the dangerous dog animal to comply with this article, and a city veterinarian has implanted the required identification microchip in the dog animal, and has inspected the residence where the dog animal is to be kept, and is satisfied that the following requirements which could have already been complied with have been complied with by the owner:
- (1) The dog animal must be licensed in accordance with this chapter and shall have a higher licensing fee;
 - (2) The dangerous dog animal shall at all times wear a collar approved by the department visible at fifty (50) feet so that the dog animal can be identified as a dangerous dog animal. The department is authorized to charge the dog animal owner a fee to cover the cost of this collar;
 - (3) The dangerous dog animal must be kept in an enclosure as defined in section 5-1 of this chapter;
 - (4) The owner must present to the department a certificate of public liability insurance in the amount of one hundred thousand (\$100,000.00) dollars to cover any injuries caused by the dangerous dog animal. The insurance shall be kept in effect continuously and shall not be cancelled unless the dog animal is no longer kept by the insured owner;
 - (5) The dangerous dog animal, when taken outside the enclosure, must be securely muzzled in a manner that will not cause injury to the dog animal nor interfere with its vision or respiration, but shall prevent it from biting any person or animal; and the dangerous dog animal must be restrained by a sturdy leash six (6) feet in length. The department is authorized to charge the dog animal owner a fee to cover the cost of this leash;

- (6) The owner shall post a sign on his premises warning that there is a dangerous dog ~~animal~~ on the property. This sign shall be visible and capable of being read from the public street or highway. In addition, the department shall design and produce a uniform dangerous dog ~~animal~~ symbol or decal, understandable by small children which shall be made available at cost to the public. Such symbol or decal must be displayed on or about the sign;
 - (7) The owner shall authorize the department to implant a microchip beneath the skin of the dangerous dog ~~animal~~ for positive identification of the animal;
 - (8) The dangerous dog ~~animal~~ must be spayed or neutered;
 - (9) The owner must attend a class on responsible pet ownership conducted by the department; and
 - (10) The owner must allow an annual inspection of the residence where the dog ~~animal~~ is kept to ensure continued compliance with all requirements of this section. More frequent inspections may be conducted in response to specific complaints regarding non-compliance with this section.
- (b) If the owner of an dog ~~animal~~ determined to be dangerous is unable or unwilling to comply with the ownership requirements listed above at anytime, the dog ~~animal~~ must be euthanized by an animal shelter, animal care agency, licensed veterinarian or the department. An dog ~~animal~~ determined to be dangerous under this chapter shall not be offered for adoption, rescue or sale.

Chapter 5, Article IV, Section 5-81, Notification of change of status, is amended as follows:

Sec. 5-81. - Notification of change of status.

The owner/keeper of a dangerous dog ~~animal~~ shall notify the director or his designee within twenty-four (24) hours if their dangerous dog ~~animal~~ is loose, unconfined, has attacked another animal, has attacked a person, or has died. If an owner/keeper of a dangerous dog ~~animal~~ gives the dangerous dog ~~animal~~ away, the owner/keeper shall within twenty-four (24) hours notify the director or his designee that said dog ~~animal~~ has been given away and provide the director or his designee the name, address, and telephone number of the new owner/keeper. Prior to taking possession of the dog ~~animal~~, the new owner/keeper must comply with the requirements of owners of dangerous dogs ~~animals~~ and provide a sworn statement to the director or his designee that they will continue to comply with all of the requirements of owners of dangerous dogs ~~animals~~ for as long as the owner/keeper has possession of the dog ~~animal~~.

Chapter 5, Article IV, Section 5-82, Dangerous animal violations, is amended as follows:

Sec. 5-82. - Dangerous dog animal violations.

- (a) A person commits an offense under state law, pursuant to the Texas Health and Safety Code, if the person is the owner of a dangerous dog and the dog which makes an unprovoked attack on another person outside the dog's enclosure ~~that occurs at a location other than a secure enclosure in which the dog is restrained~~ and causes serious bodily injury to the other person.
- ~~(b) The owner or keeper of a dangerous animal, other than a dangerous dog, which, when unprovoked, inflicts severe injury or death to a person or bites a person on public or private property while off the owner's property, shall be guilty of a misdemeanor.~~
- (be) It shall be a violation of this chapter for an owner or keeper to intentionally, knowingly, or recklessly fail to prevent a dangerous dog animal, ~~including a dangerous dog~~, from killing or wounding, or assisting in the killing or wounding of any domestic animal belonging to or in the possession of another person, or for an owner or keeper to fail to prevent a dangerous dog animal from attacking, assaulting, biting or otherwise injuring any person or assisting in the attack, assault, biting, or other injury of any person whether out of or within the enclosure of the owner or keeper, and whether or not such dangerous dog animal was on a leash or securely muzzled or whether or not the dangerous dog animal escaped without the knowledge or consent of the owner or keeper. If a person is found guilty of an offense under this section, the court may order the dangerous dog destroyed ~~The animal care officer shall seize and destroy such dangerous animal in an expeditious and humane manner. In addition, the owner or keeper shall be cited for the offense.~~
- (cd) It shall be a violation of this chapter for the owner or keeper of a dangerous dog animal to:
 - (1) Fail to comply with any of the requirements of sections 5-80 as required;
 - (2) Fail to notify the department of a change of status as set out in section 5-81; or
 - (3) Fail to keep the dog animal confined at no cost to the city during the hearing process.
- (de) The provisions under this section shall not apply to any law enforcement agency where a dog is being used for law enforcement.

- (e) A rebuttable presumption shall exist that the owner or keeper knowingly allowed a dangerous dog animal to be kept in inadequate confinement in any criminal complaint filed under subsections ~~(b) or (be)~~ (be).

SECTION 3. All other provisions of Chapter 5 of the City Code of San Antonio, Texas shall remain in full force and effect unless expressly amended by this ordinance.

SECTION 4. Violations occurring after the effective date of this ordinance shall be punished as provided in the revised Chapter 5. Violations prior to the effective date shall be punished under the former applicable Sections which shall remain in effect for that purpose.

SECTION 5. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 6. The City Clerk is directed to promptly publish public notice of this ordinance in accordance with Section 17 of the City Charter of San Antonio, Texas.

SECTION 7. The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

SECTION 8. This ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

SECTION 9. Penalties provided for in this revised Chapter 5 shall be effective five days after publication by the City Clerk.

PASSED AND APPROVED this 1st day of September, 2011.

M A Y O R
Julián Castro

ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek, City Clerk

Michael Bernard, City Attorney